CHAPTER VII.

VILLAGE FORESTS.

§ 1.—*Object of the Chapter.*

It is not to be supposed from the title of Chapter III of the Forest Act that we have yet in India a class of forests which are naturally, or according to existing law or custom, the property of a village community, a town, or a public institution. But it was thought that such a class of forests might be usefully contemplated, or looked forward to, in the provisions of the Acts. It would accord well with the institution of village communities, which the reader of the Revenue Manual will have heard about. It will probably be found a useful means of securing the existence of forest where circumstances have given the villagers in a given locality such a hold on the forest that there would be practically no object in managing it for the benefit of the State at large, though its proper management and preservation for the village might be of great importance.

I have little doubt that, in the course of time, village forests will become an important feature in the agricultural economy of the population in many parts of India. The constitution of them is, however, a matter *to be* effected. The student will not suppose that such forests as yet exist, as they do in France and Germany. The Indian Act at present only contemplates that the local Government *may* create such forests by settling the lands as reserved forest in the manner described in the preceding chapters, and then assigning its rights to the village. Rules may then be made prescribing how the forest is to be utilised, and what duties the village has for its protection and improvement. The Government is left thus with a wide discretion either to assume the management itself, or partly manage it; or keep its management under control and supervision

§ 2.—*Provisions not effective.*

The provisions of the Indian Act, however, do not suggest a probably successful mode of providing for the creation of such forests.

Section 27, it will be observed, only enables village forests to be made out of lands already constituted reserved forest. But village forests would probably be most wanted in cases where a bare proprietary right belongs to Government, but where the rights of the village are already so extensive that Government could not conveniently carry out a settlement of the rights under Chapter II for *the public* benefit. The chapter could only be useful, on the understanding that the settlement is to be carried out and the rights arranged for in the forest, and claims to land (section 10) got rid of, when they conflict with the interest of the *village* which it is the intention to assign the forest to. This, however, ought to have been expressly stated in the Act, not left to inference.

I think, however, that to make the best of the Act as it stands, it might be admissible to carry out the settlement under Chapter II on this understanding: and so, if the *soil* itself belonged already to the village the claim under section 10 (to the soil) would be recorded in favour of the village, and only those interests in the soil disposed of, which were opposed to the village interest, as either of outsiders or else individual rights of residents, adverse to the village body as a whole. In other words the Chapter II would be understood, *mutatis mutandis*, and that the settlement of rights would be on the interest of the village body as against individuals, and not as the chapter is worded, in the interest of *the State*, against individuals or communities.

§ 3.—*Provisions in Burma.*

In the Burma Act, the chapter on village forests has avoided these difficulties. It is so drawn that any land which is at the disposal of Government may be made a village forest: rights already existing in favour of the village would be no obstacle,

and a settlement of rights, where necessary, can be ordered under the usual procedure. Such settlement may be made in the interest of the village, either with reference to rights *other* than those of the village, or with reference to certain rights of individual villagers which are adverse to the interest of a body as a whole as may be necessary[1].

§ 4.—*Points to be settled.*

In settling village forests, the points to be looked to will be chiefly—

(1) to arrange for a portion of the forest being always closed for reproduction, or to allow young growth to come on undisturbed by cattle;

(2) to restricting and, if possible, removing destructive rights, such as collecting dead leaves for manure, scoring or ringing trees for resin, excessive lopping, &c.;

(3) to provide for grazing in the open portions;

(4) locating the cutting of brushwood and inferior trees for fuel and fencing purposes;

(5) fixing the number of trees to be cut in each year for building and other purposes, leaving the villagers to distribute this yield as they please, assigning it to household, establishments, &c., or selling it as may be most convenient.

The detail of this, however, belongs to a treatise on forest management.

§ 5.—*Communal Forests in Europe.*

I shall here proceed to describe the European laws regarding village or communal forests, as they may in time to come afford useful suggestions for our own guidance.

[1] It may be that the inhabitants have each some specific rights which need to be defined and regulated, while the balance of the forest-yield remains to be applied to the common profit.

remark that all these laws contemplate, to a greater or less extent, the right of the Government to control the management of such forests: and I would observe that if this is found necessary in countries which are completely civilised, it is even more so with the ignorant peasantry of India. Private owners, and even communities, are prone to look to the present and to desire to make an immediate profit, without thinking of the future: the State being imperishable, is free to a large extent from this temptation. It is obvious that this and other considerations, forcible as they are in any country, are more usually applicable to India, where there is so much ignorance and backwardness in all matters relating to general economy.

§ 6.—*In France.*

In France, communal forests and those belonging to public institutions, are, equally with State forests, under regular conservancy and subject to the Forest law (Code For., Art. 90). This refers, not to little patches of woodland, but to lands of sufficient extent to be manageable as forests. Wherever it was a question whether a particular piece of wood land was suitable for forest management, it was determined on the basis of a proposal of the Forest Department, which was discussed with the Municipal authorities or the guardians of the public institution concerned. When the forest is once recognized as such, it must be worked methodically.

All proposals for change in the plan of working or in the method of disposing of the material, all proposals to manage some of the lands as pasture, or to put others under wood, must come from the Forest Department and be submitted to the Municipal authorities as before. If they cannot agree, reference is made to the "Conseil d'État." No clearing of the forest (completely) is allowed, without the express approval of Government (Code For., Art. 91). Nor can partition be allowed, except where two or more communes may have shares in one forest and desire to separate them. Both these provisions should most certainly be applied in India. The former indeed, if Chapter II is applied, is provided

for in so many words. Partition is not expressly mentioned, but it can always be provided against by rules made under Chapter III. It would defeat the object for which these forests were constituted, if the forest were broken up and each headman, or the holders of a "patti" or section of the village, were allowed to regard a specific portion of the forest as exclusively his or theirs, nor would any forest management be possible.

All cuttings have to be made according to a plan of operations by the regular agency. No irregular cuttings on the part of the community are allowed (Code For., Arts. 100-103).

The building timber as well as the firewood in stacks has to be regularly cut, prepared, and handed over to each person entitled, in the proper quantity. Sales of the produce of the forest not required by the inhabitants for their own use, are conducted, just as in a Government forest, in the presence of the Mayor[2].

A useful provision is also made for keeping in reserve, to meet unforeseen contingencies, a certain portion of the wood that might otherwise be cut. Such a plan could only be applied in detail in India, with reference to local conditions.

As regards *establishments*, the forest guards are appointed by the Mayor and Municipal Council, but the nominees must be approved (agréés) by the Forest Department. If there is a difference of opinion, the 'prefet' decides. The same guard may have charge of a 'canton' of a State forest and of one in a communal forest, but in that case he is appointed by the State.

Communal forest guards are in all respects under the same rules as State forest guards (Code For., Art. 99). They take the same oath and have the same powers as regards making written reports of offences and other matters transacted under their own

[2] In Meaume, Vol. II, §§ 497-588, an elaborate *exposé* of Art. 105 of the Code is given regarding the method of distributing firewood to the inhabitants, so much for each hearth (unless there is an express right otherwise), the method of giving timber for repairs and building, and so forth. It would not be useful, in our present stage in India, to go into any detail regarding these provisions.

observation, and these reports have the same value as *primâ facie* evidence in court.

The communal guards are under the orders of the superior staff of the State Forest Department.

As this supervision costs the State something, Article 106 of the Code provides that the State is to be recompensed by a payment of one-twentieth (or five centimes in the franc) of the sale value of all forest produce, principal and accessory.

Products delivered or used in kind are valued, and one-twentieth of the value is paid into the treasury

Besides this, the commune pays the salaries of the guards. But beyond these two items, the State makes no other charge for supervision, for survey, &c., nor any charge for conducting cases and prosecutions in court, since if fines and compensation are recovered, these go to the State[3].

The salaries of the guards and their payments to the treasury form a first charge on the income from the sales of the yearly fellings (Art. 109). When all the material is used by the commune, and the commune has no other resources, a portion of the yield must first of all be deducted and sold by auction, sufficient to meet the charges, before the rest is distributed.

All the provisions of the Code relating to the regulation of rights, their commutation, the prohibition against grazing goats and sheep, and so forth, that are prescribed for State forests, apply equally to communal forests (Arts. 110-112).

I have dwelt at this length on the provisions of the French law because many of these rules may usefully be adopted in Indian practice, and are indeed admissible under the Act.

It is also certain that we shall have to adopt the plan of State management, though the nomination of the guards may be left to the villages, subject to the approval of the Government officers as in France.

[3] See Articles 107-8 (Code For.)

§ 7.—*In Germany.*

The German States do not all follow the same plan. In some the State manages as in France; in others it only exercises general supervision.

In Bavaria, for example, the supervision (*curatel*) extends to the following matters—[4]

I.—Without the consent of the Government such forests are not sold, leased, mortgaged, or otherwise alienated, nor can a partition take place.

II.—Forests cannot be cleared or converted into meadow or arable lands either wholly or partly.

III.—To seeing that the forests are worked properly, not wasted; that blank places are stocked and restored; that extraordinary fellings do not take place without special sanction.

IV.—To the audit of accounts.

Under the third head is included the duty of seeing that there is a suitable plan of operations on record[5] and that it is properly carried out; that proper precautions are taken to protect the forest against natural calamities as well as forest offences.

In all laws, as in France, partition is forbidden[6].

The commune has to provide the protective forest staff. It also appoints those who manage the local forest operations, but must select persons who have passed the necessary forest examinations.

The superior forest inspection and control is supplied by the State officials. The Government bears the cost of this, but the commune pays all expenses of local management, working, and protection.

[4] Roth, § 83, page 68. The Saxon law is similar. The State has only a "certain supervision" (*eine gewisse überwachung*) *Qvenzel*, page 7).

[5] Which also involve seeing that rights are properly settled and regulated, that attention has been given to making the yield continuous and perpetual, and such as is most in conformity with the wants of the community or institution.

[6] So in Austria (Law of 1852, Art. 21).

CHAPTER VIII.

UNDIVIDED OR SHARED FORESTS.

(Section 79, Indian Forest Act.)

§ 1.—*Forests really shared.*

The 79th section of the Indian Act contemplates, primarily, forests which are really the joint property of the State and some individual, or perhaps a village or community. This is just like the "forêt indivis" of the French law[1]. Under that law, whenever the State or a public institution or a commune has an undivided share in a forest with private individuals, this forest is under the forest *régime* and the State appoints the guards, and in fact manages the estate, accounting to the co-proprietor for his share of all proceeds.

In India these cases are not common; they have only, as far as I know, arisen in the Kalesar forest in the Ambála district of the Panjáb[2], and are now illustrated in Bombay by the Khot villages.

§ 2.—*Other analogous but not identical cases.*

But the 79th section also includes another class of forests in which the whole property is not shared, that is to say Government has no joint right in the property—soil and products, but the soil may belong to an individual or a body, and Government may be entitled to all or some of the produce,—trees, grass or money profits. So that this section can be applied to introduce the procedure under Chapter II, where that procedure, as already explained, could not otherwise be adopted.

As the conditions under which forests coming under this section are various, and not in all cases well defined, a wide discretion

[1] Code For., Art. 113, &c.

[2] In this case the Government succeeded, owing to failure of heirs to the original owner, to some undivided shares in the whole estate. This then is a genuine "forêt indivis."

has been left to Government, and it will be lawful either simply to issue regulations for the management of the estate, to be observed by the other party who is left in charge of the estate, or to undertake the management, accounting to the other party for his interest.

When Government does this, it may either formally constitute the estate a forest under Chapter II, or extend a certain protection to it under Chapter IV. The latter plan ought not to be adopted if the forest is permanently to remain such.

It seems to me quite clear that, though the section allows of *any* of the provisions of Chapter II being applied,—*i.e.*, all need not be—there will rarely be any occasion to make any exception, if the interpretation I have before suggested of Chapter II is admitted. To repeat this once more, it is, that whereas the Chapter II primarily applies to settlement of lands which are to be State forests, the wording is directed to the settlement of claims to land and rights adverse to the State, whereas in applying it to settling lands that are intended to be mainly or wholly for the benefit of communities, the chapter may well be complied with by settling those rights only that are adverse to the community.

For example: in the Kangra forests of the Panjáb it is held that the soil belongs to the people, and the people may graze and take what wood they want for firewood and for building, on certain terms; but apart from that, the timber trees belong to Government; and consequently (which is frequently overlooked), Government has the right *to the use of the soil to support the trees so long as any trees remain on it.* Moreover, Government has the right to control the forest, and has always established this by making and enforcing rules. Government has also the right to keep one-third (tiháí) of the forests closed for reproduction[3]. Here then is a case in which

[3] These rights in Kangra are clear from the old Forest Rules of 1860. Unfortunately the rule for closing one-third has not been carried out as intended. Instead of changing the site of the closed third as the rule describes (see rule 22 of the Kangra rules under the general rules of 1855, which have the force of law), the tiháí at first closed has been kept up ever since, so that this has got to be looked on as a permanent thing, instead of a series of thirds being closed in rotation.

the soil is vested in the villages, and the produce rights are undivided between the State and the villages, the State having never given up its right of control; and the way to constitute this a permanent forest estate would be to proceed under section 79 (*c*) and Chapter II together, in the manner already described in Chapter II, sections 3 and 4[4].

In Bombay the section would be applicable chiefly to forests in villages held by khots. The nature of the khoti tenure will be found described in the Revenue Manual, page 589. It was for a long time doubtful whether the khot was entitled to an occupancy or proprietary right in the forest and waste inside his "khot" or not, He claimed it, and Government did not assent. Ultimately a compromise was arrived at.

An Act of the Bombay Council (I of 1880) has been passed dealing with the rights of khots, and opportunity was taken to introduce a section which runs as follows:—

Government may constitute uncultivated land a reserved forest.

41. And whereas it is necessary in the general interests of the people to enable Government to promote the extension of forests in villages held by khots, it is hereby enacted that Government may at any time constitute any uncultivated land in any village to which this Act extends, or may hereafter be extended, a reserved forest. But nothing in this section contained shall derogate from any rights conferred by any sanad or other grant made by any lawful authority.

[4] Here it may not be inadmissible in a note to remark that in the Kangra forests, and often in jointly owned forests, there is a tendency in individuals to look upon plots of the forest as their own; to get up, in fact, by lapse of time and sanction of tacit acquiescence, a sort of irregular *partition* of the forest. This is unauthorised and must be steadily disallowed.

It must be understood, in speaking of the Kangra forests, that I am merely stating what *may legally* be done. I do not know what orders Government may actually pass. It may be that Government may think that practically the people of Kangra has been allowed to possess the forest with so little interference that it would be unadvisable to attempt to put the forests into regular conservancy, even though that conservancy should be exercised in the interests of the people. It is not to be expected that ignorant people will assent to any such plan, and this feeling may be considered: that is a point quite outside the sphere of a Manual of Forest law. If it is impolitic to preserve the forest, it must disappear, that is all. Possibly it will be thought right to attempt simply to continue the rules of 1855-60 (returning, however, to their spirit and intent) as a sort of intermediate plan.

Explanation.—For the purposes of this section "uncultivated land" means land which has not been tilled for a period of 20 years next before the 1st June 1879, or the date of the order constituting such reserved forest.

And, as a matter of fact, the khot is given one-third of the net income of the forest thus managed as a State revenue, in recognition of, or in compensation for, his rights, whatever they may have been, in the forest.